(1993) 1 ILR (P&H) 80

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 16470 of 1990

Ishwar Singh Sharma and Others		APPELLANT
	Vs	
The State of Haryana and Another		RESPONDENT

Date of Decision: Sept. 18, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1993) 1 ILR (P&H) 80

Hon'ble Judges: I.S. Tiwana, Acting C.J.; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: G.K. Chatrath, J.S. Yadav, R.S. Mittal and H.S. Hooda, for the Appellant; H.L. Sibal, General, J.K. Sibal, Keran Randhawa and Sanjiv Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.

More than 17 years ago, on March 20, 1974, the Government of Haryana had ordered the grant of additional dearness allowance to its employees. By the same order, it had also ordered the adjustment of excess amount of "ad hoc" relief which had been granted in the year 1972. This "adjustment" has provided "the cause of action" for these 268 petitions viz. Civil Writ Petition Nos. 8995, 10075, 10235, 11905, 12037, 12386, to 12390, 12908, 13627, 13875, 14418, 14473, 14955, 14653, 14643, 14936, 15094, 16641, 16793, 16825, 14725, 14935, 14937, 14911, 15012, 15058, 15521, 15323, 15324, 15330, 15703, 16566, 15354, 15355, 15256, 15445, 15557, 15569 to 15572, 15626, 15676, 15704, 15733, 15875, 16434, 15877, 15993, 15551, 16015, 16186, 16315, 16379, 16380, 16415, 16432, 16433, 16435, 16436, 16437, 16453, 16469, 16490, 15992, 16788, 16503, 16555, 16726, 16811, 16826, of 1990, 2310 of 1991, 16907, 16908, 12798, 16837 of 1990, 81, 86, 87, 92, 102, 161, 194, 307, 196, 232 to 235, 366, 389, 407, 418, 423, 460, 461, 469, 484, 523, 535, 567, 642, 658, 659, 660, 663, 670, 705,

708, 729, 774. 796, 797, 798, 799, 801, 825, 879, 949, 950, 975, 981, 1003, 1059. 1060, 1063, 1079, 1344, 1397, 1398. 1402. 1405, 1415, 1419, 1428. 1429, 1430 to 1434, 1440, 1442 to 1444. 1446, 1453, 1458, 1463, 1967, 1970, 1465, 1466, 1467, 1469, 1472, 1468, 1470, 1471, 1473, 1504, 1505, 1508, 1507, 1516, 1517, 1519, 1531, 1540, 1542 to 1546, 1592. 1619. 1667, 1681, 1715, 1688, 1691, 1716, 1754, 1773, 1808, 1816, 1824, 1889 of 1991, 15630 of 1990, 1890. 1907, 1913, 1931, 1948, 1965 to 1967, 1969, 1970, 2087, 2311, 2411, 2827, 2956, 3032, 360, 3014, 3157, 3154, 3363, 3714, 3778, 3838, 3887, 3967, 4023, 4051, 4052, 4054, 4082, 4230,- 4296, 4340, 4465. 4477, 4478, 3837, 3868, 4501, 4682, 4767, 4768 to 4771. 4868, 4966, 5555, 5589, 5759, 6161, 6176, 6177, 6305, 6640, 6742, 6743, 6906. 7166. 7167, 7445, 7968, 7971, 8623 of 1991. 6596, 5320, 9705 of 1991. A large number of employees of the State of Haryana are before us and they claim that the action is absolutely arbitrary and unfair. On the other hand, the Respondents contend that the Petitioners raise a stale claim and are highly belated. On merits, it is maintained on their behalf that the action is absolutely just and fair.

2. Before proceeding to consider the respective contentions, a few facts as stated in C.W.P. No. 16470 of 1990 (Ishwar Singh and Ors. v. State of Haryana and Ors.) may be noticed.

3. The 160 Petitioners are working on different posts in different offices under the administrative control of the Engineer-in-Chief of the Public Works Department in the Buildings and Roads Branch. The Government had granted ad hoc relief to its employees,-vide its orders of June 27/29, 1972 and December 19, 1972. The Government,-vide order dated March 20, 1974 decided to grant further relief in the form of additional Dearness Allowance with effect from 1st May, 1973, 1st September, 1973, 1st October, 1973 and 1st January, 1974. The rates and method of calculation were specified. It was also ordered that "while making payments of additional Dearness Allowance a part of the amount of the ad hoc reliefs as indicated in columns 5 and 7 of Annexure I to this letter shall be adjusted" (emphasis supplied). Details of the excess payment and the method of adjustment were clearly laid down. Notwithstanding the fact that the Petitioners accepted the payment of additional Dearness Allowance in accordance with this letter and the fact that there have been periodic revisions of pay scales thereafter, the adjustment of a part of the ad hoc relief has brought this bunch of petitions before us.

4. When this matter came up for hearing before the motion bench the Petitioners were directed to make a comprehensive representation and the Respondents were directed to decide the representation/s by passing a ''speaking order''. This has been done. The ''speaking order'' has been produced as Annexure P-7 by the Petitioners with their replication. The grounds for rejection of the representation may be briefly culled out. Broadly, these are:

(1) There is no legal or vested right to get a particular quantum of dearness allowance.

(2) The ad hoc reliefs were granted in the year 1972 without adopting any formula ''with reference to the cost of living.

(3) Vide letter dated March 20, 1974. the additional Dearness Allowance was granted on every 8 point increase in the Consumer Price Index. The ad hoc relief given earlier on a slab system without reference to any formula was found to be higher...than what was permissible on the basis of Consumer Price Index Formula.

(4) On the basis of calculations ''it was found that the Dearness Allowance granted by way of ad hoc relief was in excess to the extent of Rs. 9.40 to Rs. 45.00 in various categories of pay slabs when compared with the admissible Dearness Allowance as per Consumer Price Index.

(5) As a principle, it was not considered desirable to reduce the emoluments or to recover the excess amount drawn by the employees. It was decided that the additional Dearness Allowance would only accrue after the adjustment of the excess ad hoc relief already granted. Grant of Dearness Allowance is not guaranteed under a statute but is a concession conferred through an executive order. The ad hoc relief granted...in excess of what was payable could be adjusted. Pay scales were revised with effect from April 1, 1979 and January 1, 1986 when substantial increase in emoluments had been given.

5. Even though a detailed replication has been filed and the order rejecting the representations has been produced as an Annexure, the factual premises have not been assailed. Learned Counsel for the Petitioners have only challenged the order of March 20, 1974 on the ground that it is arbitrary. It has also been contended that a large number of similar petitions having already been allowed, we are bound to accept the present petitions also. On the other hand, Mr. H.L. Sibal, learned Advocate General has besides raising the objection of delay contended that the action was absolutely just and fair.

6. After hearing the counsel for the parties and perusing the pleadings we find that the ''ad hoc'' relief granted by the Government in the year 1972 was truly ''ad hoc''. Subsequent actions and events have clearly revealed that no definite formula or criterion had been prescribed or followed while granting the ad hoc relief. In such a situation, we find nothing wrong in the action of the Government in deciding to adjust the excess amount which was being already drawn by the employees towards future instalments of additional Dearness Allowance. It did not violate any Rule or Law. It did not act unfairly. It did not even withdraw or recover the excess already paid. It did not even stop the payment of the ''ad hoC relief. It only directed that additional allowance shall be granted after adjusting the excess amount of ad hoc relief already granted. We find nothing to be arbitrary. We find no illegality in the order.

7. It is also proper to remember that the country-the tax payer-bears the burden of the pay and allowances of the Civil Servants. The financial constraints that confront the State cannot be easily over-looked. Payments by way of ad hoc relief and additional Dearness

Allowance sanctioned by the State are only in the nature of welfare measures. These must have a relation to the resources actually available. Equally the Civil Servants must not flourish at the cost of others.

8. On a consideration of the matter we are satisfied that the premises on which the Government had passed the impugned orders are valid. The consequential adjustments made by the Government cannot be annulled by us in the exercise of jurisdiction under Article 226 of the Constitution.

9. Relying on the decision of this Court in Nitya Nand v. State of Haryana CWP No. 5563-A of 1989 decided on April 23, 1990, it has been contended that the writ petition deserves to be allowed. We have gone through this judgment. We are also informed that on the basis of the decision in Nitya Nand''s case (supra), a number of other petitions have also been decided. On the other hand, Mr. Sibal appearing for the Respondents has pointed out that the State Government has filed a petition for special leave in the Nitya Nand''s case and is also filing appeals, petitions in other cases. In this situation, we have decided not to refer the matter to a larger Bench. Even otherwise, we find that the decision in Nitya Nand''s case is based on the judgment in (Haryana Government College Lecturers Association v. The State of Haryana CWP No. 966 of 1986 decided on July 18, 1988. This decision was in the case of College Teachers who were not granted any ad hoc relief under the order of the State Government in the year 1972. Consequently, in their case, the question of any adjustment of an excess payment did not arise. This decision had no application in the cases of other Government servants. The pay scales of College Lecturers were determined on the recommendations of the University Grants Commission, while the employees in various departments of the Government were granted relief periodically in the nature of additional dearness allowance. The cases of College Lecturers are, therefore, entirely different from those of other civil servants and no analogy could have been drawn therefrom as in the case of Nitya Nand. Furthermore, as the matter is actually stated to be pending before their Lordships of the Apex Court, no useful purpose would be served by referring the matter to a larger Bench.

10. It is also relevant to mention that the case of College Lecturers'' Association had been decided by G.C. Mittal, J. (as his Lordship then was). In spite of that decision and in spite of judgment in Nitya Nand''s case having been placed before their Lordships, the Motion Bench consisting of G.C. Mittal, J. and S.S. Grewal, J. had considered it appropriate on February 5, 1991 to direct the Petitioners to make a representation and the Respondents to pass a speaking order. Thereafter, a detailed order has come on the record which was not available to the Bench in Nitya Nand''s case. In view of the detailed position as disclosed in this order, the necessity of referring the matter to a larger Bench is obviated.

11. It is noteworthy that in Nitya Nand''s case even the objection regarding delay had not been raised. In the present case, the learned Advocate-General has vehemently contended that the claim made by the Petitioners is absolutely stale. The orders of 1974 have been challenged in the year 1990. On a consideration of the matter, we find merit in

the objection. The Petitioners did not raise even a whisper against the order of March, 1974 during all these years. In fact, they drew all the benefits under the order which is now sought to be impugned. Not only that the pay scales have been revised in the years 1979 and 1986, but even otherwise, we have found no justification for the long silence on the part of the Petitioners. On the ground of delay alone the petitions deserve to be dismissed. The learned Counsel for the Petitioners contend that it is a recurring cause of action. We are not inclined to accept this contention. The pay of every employee had been fixed in accordance with the letter of March 20, 1974 and the Annexures thereto. Even a suit would be totally barred by limitation. In such a situation, we are not inclined to invoke our extraordinary jurisdiction under Article 226 of the Constitution of India to entertain this belated claim made by the Petitioners.

12. Accordingly, we find no merit in these petitions which are hereby dismissed. In the circumstances of the case, we leave the parties to bear their own costs.